claim succeeds and there must be judgment for him with costs.

Claim allowed.

Solicitors: *Wee Swee Teow & Co.; Oehlers & Choa.*

In re AN APPLICATION BY LOKE WAN THO

[O. C. J. (Whyatt C.J.) June 15, 1956]
[Singapore — Originating Motion No. 4 of 1956]

Certiorari — Application for order of certiorari against the City Council — Whether proceedings of City Council are analogous to a judicial process — R.S.C., O. 59, rr. 4 & 5(2). English

This was an application for an order of *certiorari* to remove certain resolutions of the City Council, Singapore, into the Court and have them quashed. The preliminary point was raised and argued, as to whether the order of *certiorari* lies to the City Council in the circumstances alleged in the case.

Held: (1) *certiorari* will not lie to bodies other than Courts *stricto sensu*, unless their jurisdiction is regulated by analogy to judicial rules; (2) the proceedings of the City Council were in no way analogous to the judicial process and therefore they are not amenable to review or avoidance by the procedure of *certiorari*.

Obiter: The learned Chief Justice also ruled: (1) the provisions of Order 59 r. 4 of the Rules of the Supreme Court relating to the framing of issues of facts to be tried on oral evidence should not be applied to proceedings such as *certiorari* on the Crown side; (2) similarly, the Court should not allow cross-examination on affidavits in Crown proceedings unless the circumstances are very exceptional.

Semble: R.S.C., O. 59 r. 5(2) provides that persons directly affected are to be served. It is therefore not necessary to serve persons who are only indirectly affected in the sense that allegations of bias are made against them.

Cases referred to:—

(1) *Nakkuda Ali v. Jayaratne* (1951) A.C. 75.
(2) *R. v. Hendon Rural District Council, Ex parte Chorley* (1933) 2 K.B. 696.
(3) *R. v. Kent Justices, Ex parte Smith* (1928) W.N. 137.
(4) *R. v. Stokesley Yorkshire Justices, Ex parte Bartram* (1956) 1 W.L.R. 254.
(5) *Frome United Breweries v. Bath Justices* (1926) A.C. 586.
(6) *R. v. London County Council, Ex parte Akkersdyk* (1892) 1 Q.B. 190.

APPLICATION for *Certiorari.*

K. Gould for the applicant.

R. H. Green for the City Council.

M. B. Brash for Sim Beng Seng.

Cur. Adv. Vult.

Whyatt C.J.: — The facts of this case need no elaborate examination inasmuch as the only question to be decided is whether or not in the circumstances of the case an order of *certiorari* will lie at all. I confine myself, therefore, to such a brief statement of the facts as is necessary to illustrate and render intelligible the conclusion which I have reached on the issue of law.

On the 29th March 1955 the *Ad Hoc* Planning Committee of the Singapore City Council approved the application of Mr. Loke Wan Tho (the applicant in these proceedings) for the erection of a cinema at 5 East Coast Road, Singapore and this decision was confirmed at a meeting of the full Council on the 29th April 1955. Subsequently the applicant submitted plans of the proposed cinema to the City Council and on the 16th November 1955 the Building Committee of the Council approved the issue of a Certificate of Fitness for the new cinema under the Theatre, Cinema and Entertainment By-Laws and this decision was confirmed by a majority of the Council at their meeting on the 30th November 1955. A few days later, on the 3rd December, a City Councillor, by name, Lee Choon Eng, gave notice of a motion proposing that the Council's decision to issue a Certificate of Fitness should be rescinded and this was followed on the 20th December by notice of another motion by Councillor Sim Beng Seng, proposing that the Council's decision confirming the *Ad Hoc* Planning Committee's decision should likewise be rescinded.

These two motions were moved and seconded at the next Ordinary meeting of the Council on the 30th December 1955 and were carried by a majority, the voting being eleven votes to nine in favour of the motions and two abstentions. The decisions of the Council arrived at as a result of these motions are recorded in the minutes of the Council's proceedings in the following terms:—

Resolved that the Council rescind the following decision

'Formally reported by the **Ad Hoc** Planning Committee, pursuant to delegated authority the following decision which has the concurrence of the Singapore Improvement Trust Planning Committee so far as its interests are concerned, and which were made at a joint meeting on the 29th March 1955:—

Approved unanimously under By-Law (1)(B) of the Theatre, Cinema and Entertainment By-laws and the Siglap Bungalow Area By-laws, the erection of a cinema on Lot 77-9 Mukim 26 East Coast Road subject to

(1) Compliance with the requirements (if any) of the Traffic Police and
(2) Submission and approval of satisfactory Building plans in compliance with Municipal Ordinance and By-laws made thereunder.'

Resolved that:—

'The decision which was confirmed at the Ordinary Meeting of the City Council on the 30th November 1955, which reads:—

Approved by a majority of four votes to three (the Chairman exercising his casting vote and Messrs. Simon, Oli Mohamed and Jaganathan dissenting) the issue of a Certificate of Fitness, under the Theatre, Cinema and Entertainment By-Laws (except By-Law IB, under which approval has already been granted by the Council's **Ad Hoc** Planning Committee) for a new Cinema Building on Lot No. 77-9, East Coast Road, as set out in Building Plan No. 288/55,'

be rescinded.

It is these two resolutions which the applicant asks should be removed by an order of *certiorari* into this Court and quashed on the grounds set forth in the statement filed in these proceedings. I should mention that the applicant also asks that the order of *certiorari* should include certain proceedings of the Council which took place on the 20th January 1956 when a motion was moved by Mr. Yap Pheng Geck and seconded by Mr. C. F. Smith (who was one of the minority on the 30th December 1955) proposing that the Council should adhere to its previous decisions of the 29th April 1955 and 30th November 1955 but as this motion was lost, there is in fact no resolution of the Council which could, on any view of the matter, be removed into this Court and quashed. It is unnecessary, therefore, to make any further reference to this particular aspect of the application in this judgment.

When the hearing of this case commenced I thought it proper to suggest that the question whether an order of *certiorari* lies to the City Council in the circumstances alleged in this case should first be decided and the arguments which followed were limited to this topic. The writ of *certiorari,* (as an order of *certiorari* used, until recently, to be called) is a very old and high prerogative writ which has its roots deep in the genius of our common law. It is principally concerned with public order in the sense that its main purpose is to enable the High Court to control the action of inferior tribunals which exceed their jurisdiction; it has also an incidental or secondary purpose in that it provides a speedy remedy to a person aggrieved by a clear excess of jurisdiction by an inferior tribunal. But it is not designed nor can it properly be used to determine issues between parties. In the course of time, certain principles have been laid down by Judges of high authority and perhaps the most important for the present purpose is that *certiorari* will not lie to bodies other than Courts *stricto sensu,* unless their jurisdiction is regulated by analogy to judicial rules. According to the lucid and penetrating *dictum* of Lord Radcliffe in *Nakkuda Ali v. Jayaratne*[1] :—

> The only relevant criterion by English law is . . . . . the nature of the process by which . . . . . they are empowered to arrive at their decision. When it is a judicial process or a process analogous to the judicial, *certiorari* can be granted.

The inquiry, therefore, to which the Court must address itself in this case is whether the proceedings of the Council on the 30th December 1955 which resulted in the two resolutions which it is now sought to quash were analogous to a judicial process. The minutes of those proceedings are exhibited to an affidavit by the Chairman of the City Council. It will be seen that they are a record of a debate, at times a somewhat acrimonious debate, on the motions that the previous decisions of the Council concerning this cinema should be rescinded. Some speakers supported their arguments by reference to traffic problems, others by reference to the views of local inhabitants, others again referred to the threat to local school amenities and the conflicting claims of education and entertainment. Some indeed made accusations of dereliction of duty against their colleagues which in turn provoked allegations that the accusers were prompted by "vested interests." The proceedings exemplify, in striking fashion, what is known in the jargon of politics as the cut and thrust of debate, but they bear none of the badges, or should I say the hall-marks, of the judicial process or of anything remotely analogous to it. Each speaker was his own witness, his own advocate, and when the division was called, his own judge.

The case of *Rex v. Hendon Rural District Council, Ex parte Chorley*[2], much relied upon by the applicant, is, in my view, not only clearly distinguishable but affords a useful and instructive illustration of a judicial or quasi-judicial act by a local government body. In that case an application for permission to build was made to the local Council and, as Mr. Justice Humphreys expressed it in his judgment, "the council evidently thought that to do justice in this particular case the application ought to be advertised in the local paper, so that if persons had any objections to the scheme they might come forward and be heard." The application was duly advertised, although as the learned Judge was careful to point out, there was no statutory obligation to do so and it was stated in the advertisement that any objections addressed to the Council in writing would be considered by it. Objections were received and subsequently the application and the objections were all considered together by the Council. "It seems to me impossible to say in this case", to quote the words of Mr. Justice Humphreys, "that the Hendon Rural District Council was not acting in a quasi-judicial manner in hearing and determining the application for permission to develop and the objections which were made to it." Nothing resembling this procedure was followed by the Council in the present case; indeed the failure to publicise the project and invite objections formed the basis of a charge of dereliction of duty during the course of the debate on the 30th December 1955. It is plain, therefore, that this decision has no application to the present case. In my judgment the proceedings of the Council which resulted in the passing of these two resolutions were in no way analogous to the judicial process and consequently they are not amenable to review or avoidance by the procedure of *certiorari.*

That is sufficient to dispose of this case but I should mention two additional matters which were

raised in the course of the argument. The first was a request by the applicant that he be at liberty to frame issues of fact to be tried on oral evidence or alternatively to cross-examine Mr. Sim Beng Seng on his affidavit filed in these proceedings. This point does not now arise in view of my conclusion that *certiorari* does not lie, but out of deference to the arguments addressed to the Court on this matter, I will state my view on it. The application to frame issues of fact was founded on the provisions of rule 4 of Order 59. This Order relates to a great variety of proceedings, some of which no doubt could appropriately be dealt with by this procedure, but there is no case in which the rule has been applied to *certiorari* and for the reasons which follow rejecting the application to cross-examine on affidavits (which apply *a fortiori* to an application to take oral evidence), I am of the opinion it should not, in practice, be applied to proceedings such as these on the Crown side. As regards the application to cross-examine on affidavits, this question was considered in *Rex v. Kent Justices, Ex parte Smith*[3] which was an application for a writ of *certiorari* in which there was a great dispute as to the facts and there were allegations of bias against one of the justices. But the Court, consisting of Lord Hewart, Mr. Justice Avory and Mr. Justice Shearman, expressed themselves strongly against adopting a practice of cross-examining on affidavits in such proceedings. "For something like fifty or sixty years," said Lord Hewart, "no order had been made on the Crown side for the cross-examination of a deponent. It was enough to add that such an order was not likely to be made except in very special circumstances, and no such special circumstances had been shown in that case." This view was re-affirmed recently by Lord Goddard in *Reg. v. Stokesley Yorkshire Justices, Ex parte Bartram*[4] where the Court allowed cross-examination because of the very exceptional circumstances of the case, which included an allegation that a Court record had been altered; but in doing so, the learned Chief Justice said, "I desire to say that it is the first time in my experience, and I think the first time in any one else's experience, in Crown proceedings for prerogative writs that cross-examination has ever taken place." From this it appears that the sages of the law have long set their faces against allowing cross-examination on affidavits in Crown proceedings unless, as in the case just cited, the circumstances are very remarkable and exceptional, which is not the case in the present proceedings. This practice, extending far back into our legal history and sanctioned by such high authority, is, in my belief, worthy of veneration and I humbly follow it. If it be objected that it prevents a full investigation of the facts in cases where bias and misconduct is alleged, the answer is that an objection of that kind shows a failure to appreciate the true nature of *certiorari* proceedings. They are, as I have already said, primarily concerned with public order in that they provide the means whereby the High Court can ensure that inferior tribunals do not exceed their jurisdiction and persons aggrieved by a clear excess of jurisdiction are given a speedy remedy. But *certiorari* is not an exclusive remedy, and if proceedings on the Crown side are not appropriate in a particular case because there is a dispute as to facts, involving a conflict of evidence, then it is open to the person aggrieved to pursue other remedies in other proceedings where provision is properly made for pleadings, for discovery, and, if necessary, for trial by jury.

The second matter raised in argument was whether an order should have been made directing that Mr. Sim Beng Seng should be served with the notice of motion and affidavits in these proceedings. Rule 5(2) of Order 59 states that persons directly affected are to be served, and the notes to this rule in the *Annual Practice* indicate that this refers to persons whose interests will be directly affected if the order which is impugned is quashed, (as, for example, a prosecutor, or, in cases concerning a Rent Tribunal, a tenant or a landlord) but does not refer to persons who are only indirectly affected in the sense that allegations of bias are made against them. Thus, in the case of *Frome United Breweries v. Bath Justices*[5] there was only one respondent, namely the Justices of the County, and the individuals against whom bias was alleged merely filed affidavits in support of the respondent's case; similarly in *Reg. v. London County Council, Ex parte Akkersdyk*[6], (which was a case of *mandamus*), the individual members of the County Council whose conduct was questioned filed affidavits but only the Council was made respondent. It is, of course, always open to the Court under rule 5(3) of this Order, on the hearing of the motion, to direct that a person not already served, should be served with notice of the motion and to adjourn the hearing to enable this to be done; but if the procedure adopted in the cases to which I have referred is followed and the individuals concerned are informed by the respondent of the allegations against them and thereafter file affidavits in support of the respondent's case, it will, I think, rarely be necessary to order that they be separately served with the notice of motion. I agree, therefore, with the submission on behalf of Mr. Sim Beng Seng that he should not have been served with the notice of motion and affidavits in these proceedings. I understand that the order was made by the Judge in Chambers *proprio motu* but as the applicant in the subsequent proceedings has claimed costs against Mr. Sim Beng Seng and has failed, I am of the opinion that he should pay Mr. Sim Beng Seng's costs.

For the reasons given earlier in this judgment, *certiorari* will not lie in the circumstances of this case and this application must be dismissed with costs.

Application dismissed.

Solicitors: *Rodyk & Davidson; Braddell Bros.; & Allen & Gledhill.*

RATNAM & ANOR. v. THE PUBLIC INSURANCE CO. LTD.

[O. C. J. (Whyatt C.J.) July 23, 1956]

[Singapore — Civil Suit No. 607 of 1956]

Insurance Claim — Third Party Insurance — Claim against insurers for amount of judgment obtained against insured person — Whether insurers are liable — Whether person driving is driving with the permission of the assured — Person holding a provisional driving licence driving unaccompanied by a licensed driver — Motor Vehicles (Driving Licences) Rules, 1948.

Road Traffic Ordinance (Cap. 227), s. 51 — Claim against insurers — Suspension of insurance.

The facts in this case were shortly as follows:— Chow Ah Tek, the proprietor of Teng Motor Service, purchased a motor car with a view to re-sale. Pending re-sale, he executed a hire purchase agreement with the defendants whereby it was agreed that the defendants as owners would let the car to the Teng Motor Service as hirers. The motor car was simultaneously insured with the defendants as insurers in the name of the Teng Motor Service. Shortly afterwards Chow Ah Tek agreed to sell the car to one Griffin for $2,400. Griffin paid $600 as deposit and promised to pay the balance when he had the money. The car was delivered to Griffin at his house in June 1954 and thereafter the car was in the possession of Griffin. On August 30, 1954, Griffin, who had only a provisional driving licence, drove the car unaccompanied by a licensed driver, and while so doing knocked down and killed one Kanniah. The plaintiffs brought an action against Griffin and obtained judgment for $20,500 and costs. The plaintiffs in this action sought to recover this sum from the defendants under the provisions of section 51 of the Road Traffic Ordinance. The defendants contended that on a proper construction of the insurance policy they were not on risk when the accident occurred, firstly, because Griffin was not a person driving with the permission of the assured within the meaning of that expression as used in the policy, and secondly, he was not a licensed driver as required by the policy since he held only a provisional licence and, at the time of the accident, was driving unaccompanied by a licensed driver contrary to the provisions of the Motor Vehicles (Driving Licences) Rules, 1948.

Held: (1) in this case it was clear that Chow Ah Tek, the assured was not in a position to forbid Griffin to use the car and therefore Griffin could not be said to be driving the car "on the insurer's order or with his permission", therefore (2) the liability arising from Griffin's negligence was not covered by the policy and the defendants were not liable to pay the sum claimed; (3) where a provisional driver drives the car unaccompanied by a licensed driver, the car is being unlawfully driven and the insurance policy must be regarded as suspended until lawful user is resumed; (4) in this case therefore the policy was suspended while Griffin was driving the insured car unaccompanied by a supervisor and consequently the defendants were not on risk when the accident occurred.

Cases referred to:—

(1) *Goodbarne v. Buck* (1940) 1 K.B. 771.

(2) *Lloyd v. Singleton* (1953) 1 All E.R. 291.

(3) *Watkins v. O'Shaughnessy* (1939) 1 All E.R. 385.

(4) *Rubie v. Faulkner* (1940) 1 K.B. 572.

ACTION to recover judgment for Damages.

Denis Murphy for the plaintiffs.

Philip Hoalim Sr. for the defendants.

Cur. Adv. Vult.

Whyatt C.J. : — The plaintiffs are the representatives of the estate of one, Kanniah s/o Packiri, who, while riding a bicycle on the 30th August 1954, was killed as a result of being knocked down by a motor car driven by a man named Griffin. The plaintiffs brought an action for negligence against Griffin and obtained judgment against him in default of appearance on the 5th March 1956 for $20,500 and costs. The plaintiffs now seek to recover this sum from the defendants under the provisions of section 51 of the Road Traffic Ordinance which provide that when judgment is obtained by a third party against an insured person in respect of liability for death or bodily injury covered by a policy of insurance, the insurers shall pay the amount of such judgment to the persons entitled to the benefit of the judgment. This statutory liability of motor car insurers is limited, as the words of section 51 show, to liability "covered by the terms of the policy" and the issue to be determined in this case is whether the driving of this car by Griffin was, at the time of the accident, covered by the terms of the policy. The defendants contend that on a proper construction of the policy, they were not on risk when the accident occurred firstly, because Griffin was not a person driving with the permission of the assured within the meaning of that expression as used in the policy, and secondly, he was not a licensed driver as required by the policy since he held only a provisional licence and, at the time of the accident, was driving unaccompanied by a licensed driver contrary to the provisions of the Motor Vehicles (Driving Licenses) Rules, 1948. Before considering these questions of law it will be convenient to summarise the facts of the case so far as they are relevant to these issues.

At the beginning of June 1954, Chow Ah Tek, the sole proprietor of the Teng Motor Service, of 15 Hamilton Road, Singapore purchased a Morris Oxford car, S.C. 6038, with a view to re-sale. Pending re-sale, he wished to raise some money on the car and accordingly he approached the defendants, who, in addition to carrying on the business of motor car insurers, finance hire-purchase agreements, and received from them the sum of $1,200. At the same time he signed a hire-purchase agreement whereby it was agreed that the defendants, as owners, would let and the Teng